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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C-201-846]

Sugar from Mexico: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to exporters and producers of sugar from Mexico. For information on the estimated subsidy rates, see the “Final Determination” section of this notice.

DATES: Effective date: Insert date of publication in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Kaitlin Wojnar, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3857.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is the American Sugar Coalition and its members (Petitioners).¹ In addition to the Government of Mexico (GOM), the mandatory respondents in this investigation are Fondo de Empresas Expropiadas del Sector Azucarero (FEESA) and Ingenio Tala S.A. de C.V. and certain affiliated companies owned by Grupo Azucarero Mexico

¹ The American Sugar Coalition is comprised of the following individual members: American Sugar Cane League; American Sugar Refining, Inc.; American Sugarbeet Growers Association; Florida Sugar Cane League; Hawaiian Commercial and Sugar Company; Rio Grande Valley Sugar Growers, Inc.; Sugar Cane Growers Cooperative of Florida; and United States Beet Sugar Association.

S.A. de C.V. (collectively, the GAM Group). The period of investigation (POI) is January 1, 2013, through December 31, 2013.

The Department published its affirmative *Preliminary Determination* on September 2, 2014.² On December 19, 2014, the Department and a representative of the GOM signed an agreement suspending this CVD investigation.³ Pursuant to timely requests for continuation filed on January 16, 2015,⁴ the Department published notice of continuation of the investigation on May 4, 2015.⁵ Subsequently, on June 18, 2015, the Department issued a post-preliminary analysis memorandum.⁶ A complete summary of the events that occurred since publication of the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final determination, may be found in the “Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Sugar from Mexico” (Issues and Decision Memorandum),⁷ which is dated concurrently with and hereby adopted by this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access is available to registered users at <http://access.trade.gov> and to all parties in the Central Records Unit, room B8024 of the Department’s main building. In addition, a complete version of the Issues and Decision

² See *Sugar from Mexico: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 79 FR 51956 (September 2, 2014) (*Preliminary Determination*).

³ See *Sugar from Mexico: Suspension of Countervailing Duty Investigation*, 79 FR 78044 (December 29, 2014) (*Suspension Agreement*).

⁴ See Letter from Imperial Sugar Company, “*Sugar from Mexico*, Inv. Nos. A-201-845 and C-201-846 – Request for Continuation of Investigations,” January 16, 2015; see also Letter from AmCane Sugar LLC, “*Sugar from Mexico*: Request for Continuation of Investigations,” January 16, 2015.

⁵ See Department Memorandum, “Standing of Imperial Sugar and AmCane Sugar to Request Continuation of the AD and CVD Investigations on Sugar from Mexico,” dated April 24, 2015; see also *Sugar from Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015).

⁶ See Department Memorandum, “Countervailing Duty Investigation of Sugar from Mexico: Post-Preliminary Analysis,” June 18, 2015.

⁷ See Department Memorandum, “Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Sugar from Mexico,” September 16, 2015.

Memorandum can be accessed at <http://enforcement.trade.gov/frn/>. The signed Issues and Decision Memorandum and the electronic version are identical in content.

Scope of the Investigation

The product covered by this investigation is sugar from Mexico. Since the *Preliminary Determination*, the Department has updated the scope of the investigation. For a discussion of these changes, see the “Scope Comments” section of the Issues and Decision Memorandum and, for a complete description of the scope, see Appendix I to this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case briefs and rebuttal briefs submitted by interested parties in this proceeding are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by the Department in the Issues and Decision Memorandum is attached at Appendix II to this notice.

Changes to the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the respondents’ subsidy rate calculations since the *Preliminary Determination* and our post-preliminary analysis. These changes are discussed in the “Analysis of Programs” section of the Issues and Decision Memorandum. As discussed in the Issues and Decision Memorandum, for purposes of this final determination, the Department relied, in part, on facts available when necessary information was not available on the record.⁸

Final Determination

In accordance with 705(c)(1)(B)(i)(1) of the Tariff Act of 1930, as amended (the Act), the Department calculated a countervailable subsidy rate for each individually investigated exporter/producer of the subject merchandise. Consistent with sections 705(c)(1)(B)(i)(I) and

⁸ See section 776(a) of the Act.

705(c)(5)(A) of the Act, the Department also calculated an estimated “all others” rate for exporters and producers not individually investigated. Section 705(c)(5)(A)(i) of the Act provides that the “all others” rate will be equal to the weighted-average of the countervailable subsidy rates, excluding *de minimis* rates and rates determined entirely under section 776 of the Act, established for individually investigated exporters and producers. Because the weighted-average countervailable subsidy rates calculated for FEESA and the GAM Group are not *de minimis* and are not based entirely on section 776 of the Act as facts available, the Department has estimated the “all others” rate in this final determination by weight-averaging the weighted-average countervailable subsidy rates calculated for FEESA and the GAM Group.

We determine the total estimated countervailable subsidy rates to be:

Company	Subsidy Rate
Fondo de Empresas Expropiadas del Sector Azucarero	43.93 percent
Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V.	5.78 percent
All Others	38.11 percent

In accordance with 19 CFR 351.224(b), we will disclose the calculations performed within five days of any public announcement of this notice.

As noted above, the Department signed a Suspension Agreement in this investigation on December 19, 2014. On March 27, 2015, following a review of the Suspension Agreement by the International Trade Commission (ITC), the Department, in accordance with sections 704(h)(3)(A) and (B) of the Act, instructed Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and to refund any collected cash

deposits without regard to countervailing duties.⁹ Notwithstanding the continuation and completion of the investigation, as the Suspension Agreement continues to be in place, the Department will not instruct CBP to suspend liquidation or to assess cash deposits at the countervailing duty rates noted above unless the Suspension Agreement is terminated.

ITC Notification

In accordance with 705(d) of the Act, we will notify the ITC of our final determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Suspension Agreement shall have no force or effect, and the investigation shall be terminated.¹⁰ If the ITC determines that such injury does exist, the Suspension Agreement shall remain in force but the Department shall not issue a CVD order so long as (1) the Suspension Agreement remains in force, (2) the Suspension Agreement continues to meet the requirements of subsections (c) and (d) of the Act, and (3) the parties to the Suspension Agreement carry out their obligations under the Suspension Agreement in accordance with its terms.¹¹

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby

⁹ See Department Memorandum, "Termination of Suspension of Liquidation: Suspended Countervailing Duty Investigation on Sugar from Mexico," March 27, 2015.

¹⁰ See section 704(f)(3)(A) of the Act.

¹¹ See section 704(f)(3)(B) of the Act.

requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act.

Dated: September 16, 2015.

Ronald K. Lorentzen,
Acting Assistant Secretary
for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product covered by this investigation is raw and refined sugar of all polarimeter readings derived from sugar cane or sugar beets. The chemical sucrose gives sugar its essential character. Sucrose is a nonreducing disaccharide composed of glucose and fructose linked by a glycosidic bond via their anomeric carbons. The molecular formula for sucrose is $C_{12}H_{22}O_{11}$; the International Union of Pure and Applied Chemistry (IUPAC) International Chemical Identifier (InChI) for sucrose is 1S/C12H22O11/c13-1-4-6(16)8(18)9(19)11(21-4)23-12(3-15)10(20)7(17)5(2-14)22-12/h4-11,13-20H,1-3H2/t4-,5-,6-,7-,8+,9-,10+,11-,12+/m1/s1; the InChI Key for sucrose is CZMRCDWAGMRECN-UGDNZRGBSA-N; the U.S. National Institutes of Health PubChem Compound Identifier (CID) for sucrose is 5988; and the Chemical Abstracts Service (CAS) Number of sucrose is 57-50-1.

Sugar described in the previous paragraph includes products of all polarimeter readings described in various forms, such as raw sugar, estandar or standard sugar, high polarity or semi-refined sugar, special white sugar, refined sugar, brown sugar, edible molasses, desugaring molasses, organic raw sugar, and organic refined sugar. Other sugar products, such as powdered sugar, colored sugar, flavored sugar, and liquids and syrups that contain 95 percent or more sugar by dry weight are also within the scope of this investigation.

The scope of the investigation does not include (1) sugar imported under the Refined Sugar Re-Export Programs of the U.S. Department of Agriculture;¹ (2) sugar products produced in Mexico that contain 95 percent or more sugar by dry weight that originated outside of Mexico; (3) inedible molasses (other than inedible desugaring molasses noted above); (4) beverages; (5) candy; (6) certain specialty sugars; and (7) processed food products that contain sugar (*e.g.*, cereals). Specialty sugars excluded from the scope of this investigation are limited to the following: caramelized slab sugar candy, pearl sugar, rock candy, dragees for cooking and baking, fondant, golden syrup, and sugar decorations.

Merchandise covered by this investigation is typically imported under the following headings of the HTSUS: 1701.12.1000, 1701.12.5000, 1701.13.1000, 1701.13.5000, 1701.14.1000, 1701.14.5000, 1701.91.1000, 1701.91.3000, 1701.99.1010, 1701.99.1025, 1701.99.1050, 1701.99.5010, 1701.99.5025, 1701.99.5050, 1702.90.4000 and 1703.10.3000. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this investigation is dispositive.

¹ This exclusion applies to sugar imported under the Refined Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program administered by the U.S. Department of Agriculture.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Scope of the Investigation
- V. Subsidies Valuation
- VI. Analysis of Programs
- VII. Discussion of the Issues

- Issue 1: Standing to Request Continuation of the Investigation
- Issue 2: Uncreditworthiness
- Issue 3: Calculation of Discount Rates
- Issue 4: Treatment of Grants as Non-recurring Subsidies
- Issue 5: Sugarcane for Less Than Adequate Remuneration (LTAR)
- Issue 6: Forgiveness of Tax Liability Under the “Catch Up” Tax Amnesty Program
- Issue 7: Countervailability of 1998/1999 Restructuring of Financiera Nacional Azucarera, S.N.C. (FINA) Debt
- Issue 8: Amount of Benefits Received from the 1999 Inventory Support Subsidy
- Issue 9: Selection of FEESA as a Mandatory Respondent
- Issue 10: Forgiveness of FEESA’s Government Debts
- Issue 11: Forgiveness of Wastewater Discharge Debt
- Issue 12: FEESA’s Interest-Free Social Security Debt
- Issue 13: Preferential Lending to FEESA
- Issue 14: Provision of General Services for LTAR
- Issue 15: Sales Denominator Adjustments
- Issue 16: Forgiveness of the GAM Group’s Government Debts
- Issue 17: Accelerated Depreciation of Renewable Energy Investments
- Issue 18: Repayment of Special Fund and Annual Budget Allocations
- Issue 19: Amount of Benefits Received from the 1997 Export Subsidy

- VIII. Conclusion

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